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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Streamlining the International Section 214 Authorization Process and Tariff Requirements	)	IB Docket No. 95-118
	)	

COMMENTS OF MFS INTERNATIONAL, INC.

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SUMMARY

MFS International, Inc. ("MFSI") commends the Commission for recognizing the need to increase business opportunities for U.S. companies in the international marketplace and its timely initiative to free U.S. carriers from outdated and costly regulations. MFSI supports strongly the Commission's proposals to: (1) issue global Section 214 authorizations to facilities-based carriers for the provision of international services; (2) make essential information readily available to all carriers and users; (3) reduce paperwork obligations and streamline tariff requirements on international non-dominant carriers.

Moreover, to advance the Commission's pro-competition goals, MFSI urges the Commission to also adopt the following proposals (1) permit authorized private line resale carriers to provide service to "points beyond" a country-designated equivalent, where the equivalent country permits such onward routing; (2) permit non-dominant U.S. carriers to resell the facilities of their non-dominant affiliates, subject to applicable tariff and contract filing requirements and common carrier non-discrimination obligations; and (3) establish as a policy matter that growth-based accounting rate structures based on carrier-specific traffic volume thresholds are discriminatory, and make available to all corresponding carriers discount accounting rates based on the total volume of traffic from the U.S. to a specific country.

As discussed in the following pages, MFSI believes strongly that adoption of these proposals are consistent with the Commission's goals and will meaningfully expand competitive opportunities for emerging carriers in the international services market.

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COMMENTS OF MFS INTERNATIONAL, INC.

MFS International, Inc. ("MFSI"), by its undersigned counsel, hereby submits these comments in support of the Commission's Notice of Proposed Rulemaking.[1] MFSI concurs with the Commission that "the dramatic growth in international competition means that, in some areas, regulatory oversight can be reduced."[2] Specifically, MFSI believes that the Commission should allow market forces to determine the number of U.S. carriers operating in international markets and remove all U.S. regulations that unnecessarily delay U.S. carrier entry into or increase the cost of operating in the international marketplace. Accordingly, MFSI urges the Commission to adopt expeditiously its proposals to (1) issue global Section 214 authorizations to facilities-based carriers for the provision of international services; (2) make essential information readily available to all carriers and users; (3) reduce paperwork obligations and streamline tariff requirements on international non-dominant carriers.

1/ *Notice of Proposed Rulemaking*, IB Docket No. 95-118 (released July 17, 1995) ("Notice").

2/ *Id.* at ¶ 1.

MFSI commends the Commission for its initiative to increase U.S. carrier participation in international markets and appreciates the Commission's openness in listening and willingness to assist U.S. carrier efforts to participate in the international telecommunications marketplace. It is in the spirit of candor that MFSI accepts the Commission's invitation for comment and urges the Commission to adopt the proposals discussed below to meaningfully expand competition in the international marketplace. Specifically, MFSI proposes that the Commission (1) permit authorized private line resale carriers to provide service to "points beyond" a country-designated equivalent, where the equivalent country permits such onward routing; (2) permit non-dominant U.S. carriers to resell the facilities of their non-dominant affiliates, subject to applicable tariff and contract filing requirements and common carrier non-discrimination obligations; and (3) establish as a policy matter that growth-based accounting rate structures based on carrier-specific traffic volume thresholds are discriminatory, and make available to all corresponding carriers discount accounting rates based on the total volume of traffic from the U.S. to a specific country.

I. BACKGROUND AND STATEMENT OF INTEREST

MFSI, a corporation organized under the laws of the State of Delaware, is a wholly-owned subsidiary of MFS Communications Company, Inc. ("MFSCC") that is authorized to provide a full range of resold and facilities-based international telecommunications services.[3]

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[3] MFSCC's wholly-owned subsidiary, MFS Intelenet, Inc., holds Section 214 authorization permitting it to offer resold International Message Telecommunications Services and international private line services. *See* File Nos. I-T-C-93-154; I-T-C-93-065. Fibernet, Inc., another MFSCC subsidiary, also holds authority to provide facilities-based service to Canada. *See* File No. I-T-C-93-174. MFSCC also has a U.S.-owned foreign subsidiary in the United Kingdom, (continued...)

MFSCC, together with its operating subsidiaries, has been a pioneer in the development of competitive and enhanced telecommunications services in the U.S. as well as several foreign markets, bringing the competitive benefits of increased vendor choice, lower prices, and state-of-the-art quality to customers in its markets. Without question, MFSI has benefitted from the Commission's aggressive pro-competition initiatives. The proposals contained in this Notice will enhance U.S. carriers' ability to compete in the international marketplace. Unfortunately, MFSI is also intimately familiar with U.S. international telecommunications policies that unwittingly protect established carriers from competition, while increasing the operating costs of emerging U.S. international carriers. Consequently, MFSI is uniquely qualified to comment in this proceeding.

II. ADOPTION OF THE NOTICE IS IN THE PUBLIC INTEREST.

MFSI commends the Commission for recognizing the need to increase business opportunities for U.S. companies in the international marketplace and its timely initiative to free U.S. carriers from outdated and costly regulations. MFSI supports strongly the Commission's proposals to:

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[3](...continued)
MFS Communications Limited ("MFSL"). MFSL holds a Public Telecommunications Operator ("PTO") license issued by the United Kingdom Department of Trade and Industry ("DTI") on September 24, 1993, pursuant to § 7 of the Telecommunications Act of 1984. MFSI is also an authorized facilities-based and resale carrier to numerous European countries. *See* File Nos. I-T-C-94-246, DA-94-1189 (Released October 28, 1994). In January 1995, MFSI's U.S.-owned foreign subsidiary, MFS Communications, AB, was granted a Public Telecommunications Operator license pursuant to ¶ 5, § 1, Second Point of the Swedish Telecommunications Act of 1993.

- enable non-dominant facilities-based carriers to obtain a global, rather than country-specific, Section 214 authorization (with the exception of certain restricted countries that would appear on an FCC-published "exclusion" list);

- simplify and accelerate the processing of international Section 214 and cable landing license applications by eliminating much of the information required in Section 214 applications, reducing the comment period on certain facilities-based (28 days) and resale applications (21 days), and encouraging electronic filing of international Section 214 applications;

- permit resale carriers to provide international resale services via any authorized carrier, except those affiliated with the reseller, without supplemental applications identifying additional underlying carriers;

- permit private line resale carriers to use interconnected private lines to provide switched services to all countries that the Commission designates as providing "equivalent" resale opportunities without obtaining additional Section 214 authorization;

- eliminate the requirement that dominant carriers obtain Section 214 authority before conveying transmission capacity in submarine cables to other carriers;

- permit carriers to obtain capacity on private carrier systems on a global basis and to add circuits on private satellite or cable systems without obtaining additional authority;

- simplify the notification requirement and reduce the notification period for carriers that discontinue, reduce, or restrict service to countries with alternative sources of service;

- streamline the international tariff requirements for all non-dominant resale and facilities-based carriers to permit them to file their international rates on a one-day notice;[4] and

- eliminate the requirement that common carriers commence operations within a specified time after obtaining Section 214 authorization.

The Commission has presented well-reasoned, concise arguments for adopting the proposals in the Notice. MFSI concurs with the Commission that adoption of these procedural

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[4] To the extent the Commission receives forbearance authority from Congress, MFSI urges the Commission to forbear from requiring non-dominant carriers to file specific rate tariffs.

streamlining proposals will advance the Commission's overall pro-competition goals and allow "international carriers to respond to the demands of the market with minimum regulatory interference, saving time and money both for industry and government."[5] Accordingly, MFSI urges the Commission to expeditiously adopt its Notice

Consistent with its desire to minimize regulatory interference in the marketplace, MFSI submits that adoption of the additional proposals discussed below will further the Commission's goals and meaningfully expand emerging U.S. carriers' ability to compete in the international marketplace.

III. THE COMMISSION SHOULD ALLOW PRIVATE LINE RESALE TO "POINTS BEYOND" COUNTRIES DESIGNATED AS EQUIVALENT.

As major international carriers race to form global alliances that threaten the development of emerging U.S. competitive international carriers MFSI urges the Commission to develop policies that promote the competitive efforts of U.S companies, and refrain from adopting rules that may hamstring the flexibility of emerging competitive carriers to provide services abroad. In MFSI's view, the "points beyond" proposal first advanced by Swidler & Berlin, Chartered's ("S&B") Comments in IB Docket No. 95-22 (filed April 11, 1995) is a prime example of a policy that would meaningfully expand competition in the international marketplace. MFSI endorses strongly the proposal of S&B that "the Commission modify, on an expedited basis, its international private line resale policy to permit carriers to provide service to 'points beyond' the equivalent country when the Commission grants a carrier Section 214 authority to serve a specified country." As detailed in MFSI's Reply Comments in IB Docket No. 95-22 (filed

[5] *Notice, supra* at ¶ 1

May 12, 1995), permitting the routing of traffic between the U.S. and third countries through leased lines between the U.S. and designated equivalent locations will provide emerging competitive carriers with the flexibility to effectively compete in the global telecommunications market, encourage development of international services competition, and place increased pressure on foreign governments to open their markets for telecommunications services.[6]

Elimination of the "points beyond" restriction would provide greater routing flexibility and advance the Commission's overriding pro-competition goals. Further, adoption of this policy would permit U.S.-owned carriers to establish competitive service offerings in niche markets abroad and to utilize least-cost routing to configure their networks efficiently. The current policy serves to frustrate rather than promote the Commission's private line resale policy without any offsetting public interest benefits. Allowing carriers to route traffic to "points beyond" the equivalent country would be an effective mechanism for increasing pressure on closed foreign markets to adopt liberalized policies and placing additional pressure on above-cost accounting rates by allowing bypass of high non-equivalent direct routes to the third countries in favor of routings through the competitive equivalent intermediate "hub" countries.

Moreover, permitting U.S. carriers to provide service to "points beyond" the equivalent country is in the U.S. public interest because it generally encourages global competition, and

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[6] The Commission should disregard AT&T's self-serving claim that allowing U.S. carriers to route traffic to "points beyond" will increase the settlements deficit by supporting above-cost accounting and collection rates. As S&B correctly points out, "in the context of imposing a 'points beyond' restriction the concern expressed by large facilities-based carriers about the 'settlements deficient' is a 'straw man.' The Commission should have in its possession adequate data to demonstrate that some large carriers' 'country-direct' and other related U.S. inbound service offerings contribute to a far greater proportion of the so-called 'settlements deficit' than the proportion of the market share that small private line resellers can ever hope to capture." *S&B Comments at 9.*

provides new entrants attempting to establish services in foreign markets with the flexibility required to compete effectively with large dominant carriers. *See* S&B Comments, *supra* at 20. Since the first form of entry permitted in foreign markets is often resale, allowing initiation of resale through the provision of service to "points beyond" permits customers to become familiar with a new U.S. entrant while concomitantly allowing the new entrant to enter a market with lower capital costs than would be required to undertake facilities construction. MFSI submits that encouraging competitive entry through flexible routing arrangements permits U.S. carriers to establish a foothold in a foreign market as liberalization occurs. In addition, elimination of the "points beyond" restriction will encourage the development of increased price and service competition with the global alliances among dominant carriers by permitting U.S.-owned resale carriers the opportunity to become established in foreign jurisdictions. Accordingly, the Commission should authorize private line resale carriers to provide service to points beyond a country designated as equivalent.

IV. NON-DOMINANT U.S. CARRIERS SHOULD BE PERMITTED TO RESELL THE FACILITIES OF THEIR NON-DOMINANT AFFILIATES, SUBJECT TO APPLICABLE TARIFF AND CONTRACT FILING REQUIREMENTS AND COMMON CARRIER NON-DISCRIMINATION OBLIGATIONS.

Consistent with the rationale for allowing private line resale carriers to provide service to points beyond the designated country, allowing non-dominant U.S. carriers to resell the facilities of their non-dominant foreign affiliates subject, of course, to applicable tariff and contract filing requirements and other non-discriminatory safeguards would similarly encourage global competition by placing downward pressure on above-cost accounting rates.

Under the Commission's current policy, a U.S. carrier (dominant or non-dominant) that seeks to connect a U.S. half-circuit (leased, owned or IRU) with a leased, foreign private line half-circuit to provide a switched, basic service must obtain country-by-country Section 214 authority and make an "equivalency showing."[7] MFSI does not challenge the basic structure of the Commission's equivalency policy which has had, to date, notable success in expediting the opening of certain foreign markets to some level of competition. Nevertheless, MFSI submits that rote application of the private line resale policy to proscribe non-dominant carriers from reselling the facilities of their non-dominant affiliates not only undermines the underlying rationale for the private line resale policy, it advances the interests of the largest well-established carriers by reducing the level of effective competition in the marketplace without any countervailing public benefits. MFSI shares the Commission's concerns regarding the adverse impact of above-cost accounting rates on competition and high consumer prices. Indeed, the private line resale policy is designed to reverse those trends.

As a practical matter, emerging U.S. carriers and their non-dominant foreign affiliates (unaffiliated with the dominant domestic carrier) simply do not have the requisite traffic volumes to engage in anti-competitive behavior or significantly affect the settlements deficit. Consequently, the Commission's policy proscribing non-dominant carriers from connecting a U.S. half-circuit to a foreign private line to reach the network of a non-dominant foreign affiliate is unnecessary, unduly restrictive and inhibits development of global telecommunications competition.

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[7] *Notice of Proposed Rulemaking*, IB Docket No. 95-22, at ¶ 79 (released February 17, 1995).

Allowing non-dominant carriers the flexibility to combine a U.S. half-circuits with a foreign leased half-circuit will not have a significant impact on the settlements deficit, given that the attendant settlements by-pass will be small in scope compared to the established carrier's "country direct" and "world direct" services and call-back services that substantially distort the settlements imbalance. Even if, on balance, allowing non-dominant U.S. carriers to resell the facilities of their non-dominant affiliates results in a short-term increase of the settlements imbalance, it would only deprive the largest facilities-based carriers of above-cost based accounting rates.

Moreover, far outweighing any temporary concerns about increases in the settlements deficit, proscribing non-dominant carriers from reselling the facilities of their non-dominant affiliates restricts severely the flexibility of resellers and other emerging competitive carriers to configure their networks to achieve operating efficiencies and establish their competitive positions in the international services marketplace. Consistent with its articulated goal of promoting competition in U.S. carrier participation in international markets, the Commission should be encouraging and supporting, rather than placing impediments on the pioneering efforts of U.S. carriers like MFSI to establish themselves in niche markets abroad to gain favorable reputations that will give them a foothold when these markets become fully competitive in next several years.

V. GROWTH-BASED ACCOUNTING RATES SHOULD BE MADE AVAILABLE TO ALL U.S. CARRIERS ON A COMPETITIVELY NEUTRAL BASIS.

It is a well-established tenet of the Commission's international settlements policy that an accounting rate reduction offered to one U.S. carrier by a foreign correspondent must be made available to all competing U.S. carriers in a non-discriminatory fashion.[8/] This policy is designed to avoid discrimination and ensure that all U.S. carriers have a fair opportunity to compete. At first glance, it appears that this policy would be rather simple for the Commission to enforce by comparing the accounting rates made available to all carriers. But as the ongoing disputes between AT&T and Sprint regarding AT&T's negotiated growth-based accounting rates for the Philippines and Malaysia demonstrate, growth-based accounting rates can have an anti-competitive, discriminatory effect if the volume thresholds are based on the traffic volumes of the largest established carriers.[9/]

MFSI submits that carrier-specific, growth-based accounting rates inherently discriminate against emerging carriers that do not yet have substantial traffic volumes. Sprint's opposition to AT&T's waiver request for growth-based accounting rates for Malaysia and the Philippines deftly illustrates the inherent discriminatory effect of growth-based accounting rates.[10/]

In the case of the Philippines and Malaysia, Sprint objects to AT&T's waiver request (1) for a temporary reduction in the accounting rate for switched voice service between AT&T and its correspondent Philippine Long Distance Telephone Co. ("PLDT") from $1.34 to $0.87 per minute for certain dial calls exceeding a threshold of 9.5 million minutes for the month of November 1994; and (2) for a temporary reduction in the accounting rate for switched voice

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8/ *See Regulation of International Accounting Rates, Report and Order*, 6 FCC Rcd. 3552, 3554 (1991).

9/ *See AT&T Request for Waiver of Accounting Rate Change with Philippines*, ISP-94-W-506 (filed December 21, 1995), suspended January 11, 1995; *AT&T Request for Waiver of Accounting Rate Change with Malaysia*, ISP-94-W-510 (filed December 21, 1994), suspended January 11, 1995.

10/ *See Sprint Opposition to International Settlement Policy Accounting Rate Waiver Request, filed by AT&T Corp. for the Philippines and Malaysia* (filed January 11, 1995).

service between AT&T and its correspondent Syrikat Telekom Malaysia from $1.05 to $0.525 per minute for certain calls exceeding a threshold of 1.5 million minutes for the month of November 1994. Sprint argues that each of these requests proposes to drop the accounting rate by as much as half for those calls exceeding the defined monthly threshold of 9,500,000 million minutes and 1,500,000 minutes, respectively.[11]

As demonstrated by the chart below, neither Sprint nor any carriers other than AT&T have sufficient traffic to qualify for the lower accounting rates.

Country	1993 Monthly Min.	1993 AT&T Min.	1993 MCI Min.	1993 Sprint Min.	Proposed Cutoff
Malaysia	2,727,169	1,221,845	1,244,794	253,624	1,500,000
Philippines	18,683,237	11,746,233	5,027,130	1,135,703	9,500,000

Source: 1993 Section 43.61 International Telecommunications Data, Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission, November 1994 (Message Telephone Service).[12]

Sprint argues that the particular volume thresholds are effectively established in a way which makes them available only to AT&T or, in the case of Malaysia, perhaps to MCI as well. As an emerging international carrier, MFSI has first-hand experience with the anticompetitive impact of carrier-specific growth-based accounting rates.

Like Sprint, MFSI has no objection to the concept of growth-based accounting rates as a means of stimulating traffic to a country so long as the growth-based accounting rates are competitively neutral. The Commission has an obligation to consider the anti-competitive effects

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[11] *Id.* at 1.

[12] *Id.* at 3.

of such rates and ensure that they are offered to all carriers in a competitively neutral manner. Consistent with this view. MFSI submits that the Commission should approve growth-based accounting rates only when the lower accounting rates are made available simultaneously to all corresponding U.S. carriers based on the aggregate volume of U.S. traffic to a particular point. In other words, the lower accounting rates should be available to all carriers when the overall U.S. traffic volume to a particular point reaches the pre-established volume threshold. This country-specific approach to growth-based accounting rates is in the public interest because it ensures that all U.S. carriers have access to the same accounting rates at the same time without compromising the lower costs to carriers that are presumably passed on to consumers.

VI. CONCLUSION

The Commission has, in recent years undertaken many initiatives to increase competition in the international marketplace and U.S. participation in these burgeoning markets. The streamlining of certain procedural requirements and the elimination of outdated and unnecessary regulations proposed in this Notice will enhance the ability of U.S. carriers to participate in the international services market. Accordingly, MFSI supports adoption of the Commission's proposal. Moreover, MFSI urges the Commission to (1) permit authorized private line resale carriers to provide service to "points beyond" a country designated equivalent, where the equivalent country permits such onward routing; (2) permit U.S. carriers to resell the facilities of a non-dominant affiliate, subject to applicable tariff and contract filing requirements and common carrier non-discrimination obligations; and (3) establish as a policy matter that growth-based accounting rate structures based on carrier-specific traffic volume thresholds are discriminatory, and make available to all corresponding carriers discount accounting rates based on the total volume of traffic from the U.S. to a specific country. MFSI believes strongly that adoption of these proposals are consistent with the Commission's goals and will further expand competition in the international services market.

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